

## MEMORANDUM

TO: Carolyn Hanson  
Marquette County Friend of the court

FROM: Michael J. Anderegg  
Probate Judge

SUBJECT: Effect of Termination of Parental Rights on Child Support Obligation

DATE: November 1, 2001

I have received your memorandum regarding the effect of termination of parental rights on the obligation to pay child support, and have reviewed both Court of Appeal cases cited in your attached materials.

I believe the Evink case, which is cited for the proposition that the child support obligation continues until adoption, is wrongly decided. It relies on dicta from Wilson v General Motors Corp., 102 Mich App 476, 301 NW2nd 901 (1980) to the effect that a parent's child support obligation continues absent adoption. Wilson is a worker's compensation case in which the issue before the court was whether or not stepchildren were considered dependents under the Worker's Compensation statute. Tanielian v Brooks, 202 Mich App 304, 508 NW2nd 189 (1993) also cited in your materials, is a case in which a circuit court apparently entered an order terminating parental rights in the course of a divorce by stipulation of the parties. While the circuit court may have inherent authority to do this, there is no statutory authority for it.

The Evink court distinguishes Bradley v Fulgham on the basis that it is an adoption case. The materials also cite the statutory provisions from the Adoption Code which terminate the existing jurisdiction of any divorce court upon entry of the Order Terminating Parental Rights. For adoption consents, and for releases executed when the child is more than 5 years old, the court must make a determination that the child's best interests are served. It seems to me the availability of support is a legitimate consideration in making that determination. I believe the court can and should consider the child's best interests in accepting a release even if the child is less than five years old. This is consistent with MCL 712A.19b(5), which requires such a determination when parental rights are terminated under the Juvenile Code.

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I think what confused the issue in the Court of Appeals is that what was referred to by the Court in the Tanielian case was not actually an order terminating parental rights; rather it was an order that the individual was not in fact a parent, and therefore had no rights, and correspondingly, no obligation to support the child.

The bottom line here is that, with the advent of the Family Division after Evink, and considering the foregoing analysis, I believe that a parent's obligation to support his or her child ceases immediately upon entry of an Order Terminating Parental Rights, and in cases assigned to me, that is the rule I expect you to follow.

If you have questions about this, please let me know.

MJA/sdl

cc: Hon. John R. Weber  
Hon. Thomas L. Solka